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13 Attorneys for Plaintiffs  
14 Oracle Corporation, Oracle USA, Inc.,  
and Oracle International Corporation

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 SAN FRANCISCO DIVISION

19 ORACLE CORPORATION, a Delaware  
20 corporation, ORACLE USA, INC., a Colorado  
21 corporation, and ORACLE INTERNATIONAL  
22 CORPORATION, a California corporation,

Plaintiffs,  
v.

SAP AG, a German corporation, SAP  
AMERICA, INC., a Delaware corporation,  
TOMORROWNOW, INC., a Texas corporation,  
and DOES 1-50, inclusive,

Defendants.

No. 07-CV-1658 EMC

**DECLARATION OF KEVIN  
MANDIA IN SUPPORT OF  
ORACLE'S MOTION FOR INTERIM  
PRESERVATION ORDER AND  
MEET AND CONFER SCHEDULE  
FOR FINAL PRESERVATION  
ORDER**

Date: June 6, 2007

Time: 10:30 a.m.

Judge: The Honorable Edward M. Chen  
Courtroom C, 15th Floor

1 I, Kevin Mandia, declare:

2 1. I am CEO and president of Mandiant Corporation, a computer forensics and  
3 information security consultation firm. I have a Master of Science degree in computer forensics  
4 from The George Washington University and am a Certified Information Systems Security  
5 Professional. For fourteen years, I have worked with electronic data investigations, computer  
6 forensics, and information security, including conducting investigations for the Department of  
7 Defense and for the Air Force Office of Special Investigations. I lecture in computer forensics at  
8 Carnegie Mellon University, serve as adjunct professor of forensics at The George Washington  
9 University, and have trained Assistant United States Attorneys and F.B.I. agents in computer  
10 forensics. Except for matters stated below on information and belief, I have personal knowledge  
11 of the matters stated in this Declaration by virtue of my retention by Oracle in this action. If  
12 called and sworn as a witness, I could and would competently testify as to such matters.

13 2. Based on my review and understanding of Oracle's investigation and of its  
14 records and data, as well as my experience with forensic computer investigations, I expect the  
15 evidence in this case will consist almost entirely of electronically stored information. The  
16 allegations in the Complaint describe SAP's practice of repeatedly using third parties' account  
17 credentials to remotely access Oracle's support website. The Complaint further describes how  
18 SAP then searched for and downloaded vast numbers of Software and Support Materials from  
19 Oracle's website, regardless of the third parties' rights to such materials. Based on these  
20 allegations, the categories of information that will be important for discovery will include the  
21 actual Software and Support Materials that SAP downloaded from Oracle's website; information  
22 related to those downloads, such as defendants' communications and internal records of the  
23 means used to access the website; information related to SAP's storage of the downloaded  
24 materials; and information related to the uses that SAP made of the downloaded materials –  
25 including potentially providing them to its customers.

26 3. I expect that the overwhelming majority of evidence that falls into these  
27 categories will consist of electronically stored information available on SAP's systems and  
28 networks, including on its servers, computer drives, and other electronic storage media.. For

1 example, SAP's server and other network logs – computer-generated reports that reveal the  
2 history of what data is placed onto and moved off of a particular computer or system – will detail  
3 what materials were taken from Oracle's system, by whom at SAP, and by using which customer  
4 credentials. These server and network logs will also demonstrate how SAP stored and used those  
5 materials, as well as who had access to them. SAP's email records may reflect similar  
6 information. As another example, the drives of SAP's computers may have records indicating  
7 when SAP used those computers to access Oracle's systems, by whom, and by what means.

8 4. Electronically stored information, including server and network logs and other  
9 kinds of electronic data and evidence, is dynamic and mutable by nature. Server logs for a  
10 sophisticated enterprise with substantial internet activity will occupy a significant amount of  
11 computer storage space. For this reason, many companies do not keep these logs for more than a  
12 few days at a time in the ordinary course of business. Thus, some entries on network logs that  
13 show particular download or transmission activity on a given day may only exist for short  
14 periods of time. Moreover, since electronic records are frequently overwritten, deleted, or  
15 modified during the normal course of business, this data is highly susceptible to inadvertent  
16 alteration or destruction. Further, any internal inquiry or investigation performed without proper  
17 forensic safeguards can impact the integrity of electronic evidence, including by materially  
18 affecting, changing, or destroying evidence.

19 I declare under penalty of perjury under the laws of the United States of America  
20 that the foregoing is true and correct.

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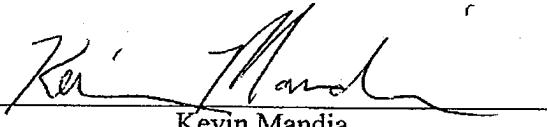
22 Executed on April 30, 2007 in Alexandria, Virginia.

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By:



Kevin Mandia

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